

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
SPECIAL INVESTIGATIONS DIVISION

GIL GARCETTI • District Attorney
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June 7, 1993

Captain Donn P. Brooks
Los Angeles County Sheriff's Department
Homicide Bureau
211 West Temple Street
Los Angeles, California 90012

Dear Captain Smith,

Re: S.I.D. File Number: 100-7456/92-0627
L.A.S.D. File Number: 092-18442-0376-011

The Special Investigations Division of this office has completed its review of the circumstances surrounding the November 30, 1992 fatal shooting of [redacted], age 15, and the nonfatal shooting of [redacted], also age 15, involving Los Angeles County Sheriff's Department Deputies Edward G. Everette, David S. Garrett, Brian A. Meeder, and Robert C. Harris. This inquiry consisted of a reading of all reports prepared by Sheriff's investigators, a tour of the shooting scene by Deputy District Attorney Reid Rose and District Attorney Senior Investigator [redacted], and attendance at an autopsy of the deceased by Investigator [redacted]. No independent witnesses were interviewed. Based upon the foregoing, this office concludes that the deputies acted lawfully.

FACTUAL ANALYSIS:

On November 30, 1992, Los Angeles County Deputy Sheriff Edward G. Everette was on routine patrol in an unincorporated area of Los Angeles County. He was accompanied by Deputy David Garrett. According to the deputy, they met with Deputies Brian Meeder and Robert Harris and agreed to jointly conduct a foot patrol in an area where several acts of violence recently had occurred.[1] All deputies wore patrol uniforms. After parking their police cars, the deputies walked through the area. Deputy Everette said that he heard gunshots fired in the distance. The deputies continued their patrol and decided to pass through the rear yard of a house into the adjacent alley. While searching for a way to pass through a chain-link fence

1. These included incidents of assault, robbery, arson, and random shooting.

Criminal Courts Bldg.
210 West Temple Street
Los Angeles, CA 90012-3275

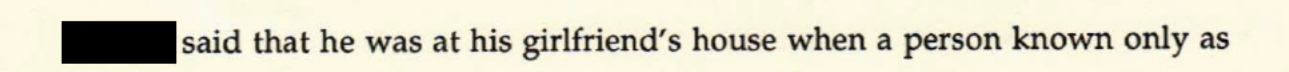
into the alley, Deputy Everette observed a young male climb over a wooden fence bordering the opposite side of the alley. A second young male followed the first. The first male placed an object wrapped in a plastic grocery bag on a ledge of the fence. Deputy Everette said that he believed that the bag contained beer. A third youth climbed over the fence after the first two. The second youth drew a blue-steel small-caliber handgun from his waist. Deputy Everette said that he turned to the other deputies and alerted them to the presence of the gun. The youth pointed the weapon toward the sky and fired approximately five shots. Deputy Everette said that one of the other males spoke to the person with the gun. This person stopped firing, and according to Deputy Everette, pointed the gun in the direction of the deputies. Deputy Everette said that he immediately shouted that he was a deputy sheriff and ordered the person to drop the gun. He said that he saw a muzzle flash from the person's gun. The deputies began firing their service weapons at the gunman. Deputy Everette said that the gunman ran through the alley a short distance and fell to the ground. Deputy Everette said that he fired his weapon because he feared for his life. "I visualized when he was shooting the gun, actually visualized him shooting at us and I felt bullets coming at me and I could visualize bullets coming and hitting me. . . ."

Deputy Everette said that he issued a radio broadcast requesting assistance. Deputies Laurence Delmese and George Sakabu arrived in the alley. Deputy Delmese stated that he observed [redacted] sprawled on the ground next to the wooden fence. [redacted] appeared to have suffered a gunshot wound to his right buttock. Approximately ten feet away, toward the position of the deputies who had fired their weapons, was a .22 caliber semiautomatic pistol. Deputy Delmese said that he peered over the wooden fence and saw the decedent, [redacted], lying in the backyard of the residence. [redacted] also appeared wounded. [redacted] and [redacted] were taken into custody without further incident. The third suspect escaped from the area. [redacted] later expired at a local hospital.

Sheriff's investigators spoke with the other deputies who fired their weapons. Each related a version of these events substantially similar to that given by Deputy Everette. Deputy Garrett stated that he fired only after seeing a muzzle flash in his direction. Deputies Meeder and Harris said that the gunman pointed the weapon toward them. Each stated that he feared for the safety of the other deputies and himself.

Sheriff's investigators interviewed the persons involved in the shooting:

[redacted]


[redacted] said that he was at his girlfriend's house when a person known only as

"[redacted]" arrived. [redacted] was accompanied by somebody named [redacted] and an unknown person. According to [redacted], [redacted] brought a gun. [redacted] said that they each went to toward the rear alley to test the weapon. They were accompanied by the brother of his girlfriend, the decedent [redacted].[2] They climbed over the fence and [redacted] fired the gun approximately four times in the air. [redacted] said that he was approximately four feet from [redacted] when the gun was fired. [redacted] said that the firing stopped and the group began to walk away. He said that the deputies appeared and shouted, "Freeze." He said that the deputies began firing. He said that he was struck by a bullet and he threw himself to the ground. The others ran. [redacted] said that [redacted] ran and threw the gun. It landed approximately five or six feet away from where he ([redacted]) lay. [redacted] said that the decedent was shot while standing close to [redacted]

Sheriff's investigators asked [redacted] who touched the gun prior to this incident. [redacted] said that [redacted], [redacted] and he handled the gun.

[redacted]

[redacted] stated that the decedent, [redacted], and he found the weapon that they later fired in an alley near where this incident occurred. He said that they walked toward the decedent's house and attempted to fire the gun. After discharging the weapon four or five times, it jammed. They continued walking and were joined by [redacted] and a person named [redacted]. The gun was displayed and handled by [redacted], and [redacted]. According to [redacted], the decedent never touched the gun. [redacted] said that they entered the alley where the incident occurred by climbing over a fence bordering the rear yard of an apartment building. He said that the decedent remained on top of the fence. The others gathered within a few feet of each other at the base of the fence. He said [redacted] carried the gun and passed it to [redacted]. According to [redacted], [redacted] fired the gun between four and five times and the weapon jammed a second time. He said that unknown persons fired at them from the backyard of a residence. [redacted] said that these persons did not identify themselves. [redacted] said that he ran without looking back. He heard a loud scream from the decedent. After passing four or five backyards, he climbed over a fence and exited the alley. [redacted] stated that after he scaled the fence, he heard the sound of breaking wood and the decedent say, "You got me, you got me, I give up." According to [redacted], this was followed by gunshots. [redacted] said that between two to five seconds elapsed from the first volley of gunfire to the second group of gunshots. [redacted] opined that the deputies broke through the wooden fence and shot the decedent. He stated that he believed this because of what he heard and that the following day, he observed that the fence was broken where the decedent climbed

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2. [redacted] stated that he knew the decedent as [redacted], not [redacted]

over it.[3]

[redacted]

[redacted] told investigators that he was with the decedent, [redacted] and [redacted] at the time of the shooting.[4] He said that earlier that evening, they were walking together when [redacted] found a .22 caliber semiautomatic pistol. [redacted] pointed it into the air and fired it five times. The weapon jammed. The group left the area and walked to the residence of the decedent. While en route, they encountered an individual who owned a similar gun. This person gave them five more bullets. They attempted to load the bullets, but encountered difficulty. The gun was passed around as they each expressed opinions on how to insert the bullets into the weapon. [redacted] said that the decedent did not touch the gun. They went to the rear of the decedent's residence and climbed over the fence bordering an alley. [redacted] said that [redacted] preceded him over the fence. [redacted] handed the gun to [redacted] [redacted] said that after the others entered the alley, the decedent remained on top of the fence and watched the proceedings. Each of them were grouped close together. [redacted] pointed the gun in the air and began firing. After he stopped shooting, [redacted] said that he heard noises from the other side of the alley. He said that flashlights illuminated the area, and somebody said, "Freeze." [redacted] said that they began running and gunshots were fired. The decedent, sitting on the fence screamed in pain and fell off the fence. [redacted] said that [redacted] started to run, but disappeared. [redacted] said that he saw [redacted] throw the gun before he was lost from view.

OTHER WITNESSES:

Sheriff's investigators spoke with [redacted] Mr. [redacted] said that he was sitting in the living room of his house when he heard three gunshots in the nearby alley. After a pause of thirty seconds, a second volley of three gunshots sounded. Immediately thereafter, he heard the sound of an automobile traveling at a high rate of speed in the alley behind his house. Mr. [redacted] said that he went to his backyard and peered over the fence. He said that he observed officers attempting to apprehend somebody who was jumping over the fence. He said that the deputies shouted at the person to "stay down." He did not see or hear anything

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3. Sheriff investigators attributed this damage to paramedics and deputies who opened a hole in the fence to gain access to the decedent.

4. [redacted] said that he did not know the full names of the participants. He identified them by their first names and their nicknames. Thus, the decedent was referred to as "[redacted]", [redacted] was called "[redacted]", and [redacted] was known as "[redacted]". [redacted] said that he was called "[redacted]".

else.

FORENSIC EVIDENCE:

Four expended .22 caliber shell casings were retrieved from the area where the deputies said that [redacted] was shooting the gun. The .22 caliber pistol first observed by Deputy Delmese approximately ten feet from the location where [redacted] fell was subsequently examined by a firearms examiner. He opined that these recovered casings were fired from this gun. A comparison of the single bullet recovered from the body of the decedent was compared to the weapons of the deputies who fired their guns. The examiner stated that the bullet was fired from the pistol belonging to Officer Harris.

On December 2, 1992, an autopsy was performed upon the remains of the decedent. The surgeon ascribed the cause of death to a single gunshot wound. The bullet entered through the right side of the abdomen. It's path was right-to-left and upward. The surgeon stated that the bullet was fired from an indeterminate range, but noted an absence of cutaneous stippling or sooting.

Gunshot residue examinations were conducted. The coroner's office determined that gunshot residue was present on the decedent's hands. The analyst stated that the decedent may have discharged a firearm, placed his hands in an environment of gunshot residue, or received the particles from an environmental source.

The Sheriff's Department administered two separate tests for gunshot residue to [redacted] One proved inconclusive. The second detected the presence of lead spheres, commonly found in gunshot residue. The analyst stated that she could not ignore "certain occupational or environmental sources" for these findings.
Following the investigation of this matter, prosecutors issued a petition alleging murder and discharge of a firearm with gross negligence against [redacted] The murder allegation was based upon his provocative act of firing at deputies, leading to the death of the decedent.

LEGAL ANALYSIS:

California law permits the use of deadly force in one's self-defense or in the defense of another if it reasonably appears to the person claiming the right of self-defense or the defense of another that he actually and reasonably believed that he was in imminent danger of great bodily injury or death. People v. Williams (1977) 75 Cal. App. 3d 731, 739.

In protecting himself or another, a person may use all force which he believes

reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. California Jury Instructions--Criminal (CALJIC) 5.30, 5.32.

A person is guilty of no crime if his legitimate act in self-defense results in the inadvertent death of an innocent bystander People v. Levitt (1984) 156 Cal. App. 3d 500, 507; People v. Mathews (1979) 91 Cal. App. 3d 1018, 1023.

In the present matter, each of the deputies stated that they fired because [redacted] pointed a weapon at them that he had just shot in the air. Two of the deputies said they saw [redacted] fire in their direction. If true, these events support the deputies' stated belief that their lives were in danger and made reasonable their response of returning fire at [redacted]. The evidence does not show that the decedent had a weapon. However, he was in close proximity to [redacted] and was fatally wounded during the same exchange of gunfire. There is no evidence that the deputies intended any evil purpose or exercised culpable negligence toward the decedent. Rather, he was in the crossfire between a person who presented a deadly threat and others who acted to lawfully defend themselves. Moreover, the decedent was arguably involved in [redacted] act of shooting the gun. Therefore, he was not an innocent bystander. If criminal liability does not attach when a legitimate act in self-defense results in the inadvertent death of an innocent third person, a fortiori, it cannot exist with respect to a decedent who shares responsibility for the act that precipitated the use of deadly force. Thus no criminal liability attaches to the deputies because the decedent was struck by gunfire during a legitimate act of self-defense. Levitt, 91 Cal. App. 3d at 1023.

The other participants in this incident both support and contradict the deputies' version of these events. [redacted] denied that he fired the gun in the alley, stating that [redacted] was shooting and dropped the gun near him when the deputies opened fire. However, both [redacted] and [redacted] identified [redacted] as the person firing the gun in the alley. The result of the gunshot residue analysis was consistent with [redacted] firing the weapon. Finally, the gun was located close to him when the deputies secured the area.

[redacted] alleged that the deputies climbed over the fence and shot the decedent after the decedent surrendered. He admitted that he did not see this occur. He said that he based this belief upon hearing gunshots after the decedent announced his surrender and the fact that the next day, the fence appeared broken. However, he was running from the scene and was not in a position to hear the decedent announce his surrender. The independent witness, [redacted] said that he heard only two series of gunshots, separated by thirty seconds. He did not report hearing a third volley of gunshots such as [redacted] described. Mr. [redacted] account

closely corresponded to the version related by the deputies. Finally, Sheriff's investigators determined that the damage to the fence was caused by medical personnel and deputies seeking access to the decedent. Based upon all of the available information, this office concludes that insufficient evidence exists to establish that these deputies acted unlawfully. Accordingly, no further action will be taken and this matter is closed.

Very truly yours,

GIL GARCETTI
District Attorney

FRANK E. SUNDSTEDT
Assistant District Attorney

By [signature]

ALAN S. YOCHELSON
Deputy District Attorney
[redacted]

c: Deputy Edward G. Everette
Deputy David S. Garrett
Deputy Brian Meeder
Deputy Robert C. Harris